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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JACOB M., a Person Coming Under
the Juvenile Court Law.

B239030
(Los Angeles County
Super. Ct. No. CK12850)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALEX M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Margaret Henry, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant
and Appellant.

John Krattli, County Counsel, James M. Owens, Assistant County Counsel, Aileen
Wong, Deputy County Counsel, for Plaintiff and Respondent.

Alex M. (Father) appeals the dependency court's jurisdictional and dispositional orders. He contends that the court's finding of jurisdiction is unsupported by substantial evidence, and that the dispositional order removing his son (Jacob M.) from his custody is in error. We find the contentions unavailing and affirm.

FACTS

Detention

Jacob M. was born in October 1999.

This matter came to the attention of the Department of Children and Family Services (DCFS) on October 11, 2011. That day, a DCFS social worker and two police officers traveled to an apartment building in Los Angeles to investigate abuse allegations. They found Father standing outside the building. Father stated that his ex-girlfriend lived in the building and that his son Jacob was staying with her. According to Father, his ex-girlfriend would not let him take Jacob or retrieve Jacob's clothes.

Father exhibited unusual behavior. He told the social worker that he had been struck in the head with two bullets earlier that day. The social worker spoke with the hospital where Father was treated and determined that Father had been hit with pellets from a pellet gun. Father disagreed with this assessment.

Father appeared disoriented, not knowing exactly where he was. His speech was slurred and pressured, and he gave nonresponsive answers to the social worker's questions. He appeared disheveled, his clothes were dirty, and he had holes in his pants. He intermittently exhibited tremors and scratching. Father made irrational statements, such as accusing his ex-girlfriend of touching her grandchild's genitals but then stating he had never observed any inappropriate touching. When asked how he knew about the touching, Father stated he would not say because "people are listening." Father said his life was in danger.

Father asked the social worker to speak in a quiet tone because someone was "trying to kill" Father. The social worker asked Father if he was fine, and Father responded that he was "sick." As he was speaking, Father appeared to grow more delusional and paranoid. The social worker attempted to discuss the possibility of

referring Father for a mental health assessment, but Father appeared unable to comprehend the matter. Father stopped communicating and began scratching his arms, neck, legs, and face.

Jacob was taken into protective custody. He expressed fear of being left in the care of Father. He denied ever being mistreated by Father's ex-girlfriend.

When questioned further, Father stated that he and Jacob were homeless. He said that he had no relatives with whom Jacob could stay. Father stated that, because he had no resources, he had planned on calling DCFS the day before to request that the Department pick up Jacob, but that his ex-girlfriend and Jacob asked him not to.

When interviewed, Jacob said that nobody had ever touched him inappropriately or physically disciplined him. But he said Father was "crazy" and he did not feel safe around him anymore. He said that Father was violent and that nobody liked him.

Jacob said he was frequently neglected by Father, that he was left with strangers and made to go without food all day. He said that for at least two years he and Father had been squatting with no place to go. They had lived with possibly 20 or 30 different families within the previous few years. He said there were days when they did not take showers and went about with dirty clothes. According to Jacob, Father had recently been acting like he was on drugs. Jacob said he found prescription pain medication in the closet about one week prior. He said he did not feel loved by Father and was tired of living in the streets. Jacob appeared to understand all the social worker's questions and answered them in a clear and concise manner.

Later, when interviewed, Father said that if Jacob was released to him they would walk all night because they had nowhere to go. Father appeared to be demonstrating a psychotic affect. Investigation revealed that he had received a "pending diagnosis" of schizotypal personality in 2001. DCFS referral history showed that in 2009, 2008, and 2005 DCFS received three separate allegations of general neglect by Father, all of which were determined to be unfounded. A 1999 referral pertaining to Jacob's mother (who had since been diagnosed with severe mental health problems and was a resident in a

long-term care facility) was substantiated. A section 300 petition¹ filed in that matter contained the following sustained allegation: “[Father] has demonstrated some emotional problems consisting of acting in an irrational manner and is currently residing with the mother which limits his ability to provide care and supervision for the child and places the child, Jacob at risk.”

The ex-girlfriend stated that she had frequently taken care of Jacob because Father left him in her care for days at a time. She said that Jacob was not safe in Father’s care.

At the October 14, 2011, detention hearing, the dependency court ordered Jacob detained. Father was granted monitored visits.

In the November 4, 2011, disposition report, the social worker reported that Jacob stated that he and his Father would move from house to house. They would “rent out rooms in people’s houses.” Jacob stated: “I don’t want to be back with my dad until he fixes his behavior.” He preferred to stay with relatives or his foster mother.

Father called the allegations against him “an insult.” He stated that on October 11, 2011, he was shivering because he was cold and had just left the hospital. He denied having any auditory hallucinations. He claimed that his ex-girlfriend tricked Jacob into saying that he did not want to live with him, and that she “gained mental control over the social worker who made these allegations.” He stated that the allegation that he used prescription medicine was a “complete 100% falsehood.” Father denied having any history of alcohol abuse, substance abuse, domestic violence, sexual abuse or mental illness.

A monitored visit had been arranged for Father to visit Jacob on October 22, 2011, but Father did not show. Jacob stated that he did not want to visit with Father.

At the November 4, 2011, pretrial resolution conference, Jacob’s counsel stated that Jacob would like to return to his Father’s home. He stated that Jacob had spoken to Father two days prior, and that Father sounded better and apologized to him.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

A January 12, 2012, interim review report stated that the social worker had met Father at his residence. He was staying in the bedroom of another person's one-bedroom apartment, which was described as overcrowded with furniture and personal belongings. The apartment had running water, working utilities, and smoke detectors, and cleaning agents and medication were appropriately stored. Father had missed one random drug test. He reported that he arrived at the test location at 2:41 p.m., but the location closed early that day, at 2:30 p.m. Father was reported as having no criminal history. Jacob stated that he was "not sure" if he wanted to be returned to Father yet. He was afraid he would end up in a situation similar to before, and was worried about "be[ing] in danger" and "get[ting] shot too."

A last-minute information for the court form stated that Father had provided the social worker with documentation showing that the drug testing location to which Father was assigned had closed early on the day he missed his test. Father did test for drugs on January 9, 2012, and the results were negative.

The adjudication hearing was held on January 13, 2012. Father requested that the dependency court dismiss the section 300 petition under section 350, subdivision (c), because DCFS did not meet its burden of proof. Jacob's counsel joined DCFS in opposing the request, stating that Jacob loves his Father, but did not currently feel safe living with him. The dependency court denied Father's motion.

After hearing further argument, the dependency court sustained one count against Father under subdivision (b) of section 300: "[Father] has demonstrated mental and emotional problems consisting of acting in an irrational or paranoid manner, which renders the father unable to provide regular care of the child. The child does not wish to remain in the father's home and care. Such mental and emotional condition on the part of the father endangers the child's physical health and safety and places the child at risk of physical harm and damage." The court set the matter for a disposition hearing.

On January 19, 2012, the social worker reported that Father had not been having visits with Jacob because Jacob did not want to see him. The foster mother stated that Father called Jacob about once a week.

At the January 19, 2012, disposition hearing, the dependency court declared Jacob a dependent of the court under section 300, subdivision (b), and ordered him removed from Father. DCFS was ordered to provide Father with reunification services.

On January 20, 2012, Father filed a notice of appeal.

DISCUSSION

I. Substantial Evidence Supports the Dependency Court’s Finding of Jurisdiction.

Father contends that there was insufficient evidence to sustain the petition against him.² He argues that the dependency court should not have found jurisdiction under section 300, subdivision (b)³ because Jacob had not suffered serious physical harm, and there was not a substantial risk that he would.

We review the dependency court’s jurisdictional findings for substantial evidence. “In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) All conflicts are resolved and all legitimate inferences are drawn in favor of the

² Respondent spends a significant portion of its brief arguing that the dependency petition was facially sufficient. As pointed out in the appellant’s reply brief, however, appellant does not challenge the sufficiency of the pleading; he challenges the sufficiency of the evidence supporting jurisdiction.

³ Section 300, subdivision (b) states, in pertinent part: “300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: ... [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. . . .”

dependency court's order. (*Ibid.*) "[W]e review the record in the light most favorable to the court's determinations." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) We do not reweigh the dependency court's determinations of fact or credibility. (*Ibid.*)

"Evidence from a single witness, even a party, can be sufficient to support the trial court's findings." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Viewed in light of these principles, the record supports the dependency court's finding of jurisdiction. In arguing lack of substantial evidence, Father relies primarily on *In re Matthew S.* (1996) 41 Cal.App.4th 1311 (*Matthew S.*). In that case, the Court of Appeal held that harm to a minor may not be presumed merely because the parent is mentally ill; rather, DCFS has the burden of specifically showing how a minor has been or will be harmed. (*Id.* at p. 1318.) *Matthew S.*'s mother had delusions that her son's penis had been mutilated, that he was being treated at UCLA, and that she murdered the physician when she found her son to be in a "septic state." (*Id.* at p. 1314.) Acting on these delusions, she took her son to see a urologist, who found no injury. The doctor contacted mental health services, and children services were subsequently contacted. (*Ibid.*) The trial court found jurisdiction under section 300, subdivisions (b), (g), and (c).

The Court of Appeal held there was insubstantial evidence to support jurisdiction under subdivisions (b) or (g), but jurisdiction was appropriate under subdivision (c). (*Matthew S.*, *supra*, 41 Cal.App.4th at pp. 1319-1321.) With respect to subdivision (b), the court found that there was no evidence of physical harm or a substantial risk of serious physical harm to the child, and there was no showing of a failure to provide adequate food, clothing, or shelter. (*Matthew S.*, at p. 1319.)

Father argues that if jurisdiction was not proper under section 300 subdivision (b) for the mother in *Matthew S.*, who had more outwardly disturbing delusions than Father, then jurisdiction under subdivision (b) is not warranted in this matter. The problem with Father's argument is that it confuses the extent of mental illness with the potential for harm. Although the court in *Matthew S.* found, under subdivision (c), that the child was at substantial risk of suffering serious emotional damage, it found no substantial risk of physical harm. (41 Cal.App.4th at pp. 1319-1321.) The court wrote: "Aside from going

to the urologist to make sure her son was not harmed after she had a delusion, she is an excellent mother. Matthew S. consistently expressed no fear of Alexandra S. for any reason. Neither did his siblings. She has a well-kept home, provides meals to her children and has consistently obtained medical treatment for the children. Her children are healthy, well groomed and attractive. She has voluntarily participated in extensive therapy for herself over the years, too.” (*Id.* at p. 1319.)

The contrast with the living situation provided by Father could not be more apparent. Although he appears to love his son, Father’s emotional and mental problems put Jacob at substantial risk of suffering serious physical harm. Jacob stated that Father frequently left him with strangers. Father’s ex-girlfriend stated that Father would disappear for days at a time. Leaving a child with strangers and disappearing for long stretches is not conducive to a child’s well-being. Furthermore, Jacob stated that he and Father had been squatting for at least two years and estimated that they had lived with 20 to 30 different families. Father himself stated that they were homeless, and would walk the streets because they had no place to go. Although Jacob had not yet suffered serious physical harm due to this situation, it was substantially probable that, if this dangerous situation continued, he would. Moreover, unlike the child in *Matthew S.*, whose mother provided meals, Jacob was left to go without food all day. Failure of a parent to provide a child with adequate food is in itself a basis for jurisdiction under section 300, subdivision (b).

Taken individually, as Father does in his brief, each of these conditions might not have been sufficient alone to impose jurisdiction. But looking at the situation as a whole, we cannot say that the trial court erred. In *Matthew S.*, and *In re Jamie M.* (1982) 134 Cal.App.3d 530, 541, another case cited by Father, the parent’s mental illness was the sole basis for the allegation of jurisdiction under section 300, subdivision (b). That was

not the case here. Since the trial court's finding of jurisdiction under section 300, subdivision (b) was supported by substantial evidence, we do not reverse.⁴

II. The Dependency Court Did Not Abuse Its Discretion in Removing Jacob from Father's Custody.

“The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) A court abuses its broad discretion when it makes a determination that is arbitrary, capricious, or patently absurd. (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.) The reviewing court should defer to the trial court and interfere only if it finds that ““under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.”” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Pursuant to section 361, subdivision (c)(1), a juvenile court may not remove a child from parental custody unless “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.” And, although this finding must be made by clear and convincing evidence, on appeal “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.” (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881.)

⁴ For this reason we also find that the trial court properly denied Father's request to dismiss the petition pursuant to section 350, subdivision (c). (See *In re Eric H.* (1997) 54 Cal.App.4th 955, 968-969 [“Section 350(c), the equivalent of a motion for nonsuit, allows a parent to test the sufficiency of the Agency's evidence before presenting his or her case.”].)

Here, the dependency court acted within its broad discretion in ordering Jacob removed from Father's care. For the reasons explained above, were Jacob to return to Father's custody, there was substantial risk to his physical health and well-being. These dangers included the lack of suitable housing and nourishment, the absence of a known caretaker, and other unsafe conditions that were likely to manifest due to Father's irrational and paranoid behavior.

Father's suggestion that the dependency court should have implemented less drastic protective measures and not removed Jacob from his care is unavailing. Alternative approaches, even if viable, do not establish that the juvenile court in any way abused its broad discretion.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.